STEEL DISSOLUTION IN SUPREME COURT

U. S. Files Final Briefs in Sherman Law Suit Against Harvester Too.

OPPOSES ANY COMBINE

Holds Lower Tribunals Erred in Ruling a Trust Could Be Benevolent.

WASHINGTON, Feb. 17.—The Government is preparing to put the Sherman anti-trust law to its supreme test before the highest court in the two greatest of modern anti-trust suits—the actions to dissolve the United States Steel Corporation and the International Harvester Company.

These two cases on appeal are to be argued before the highest court early in March and the Attorney-General and his aids to-day filed in the court the "last word" in support of the constitutionality of the Sherman act and in support of its contention that the act may reach out and arrest the progress of a great industrial corporation on account of its stupendous size or the fact that it has driven competition out of the field and is a monopoly.

Involved in the present issue also is the policy of the courts in dealing with modern trusts. There is reason to believe that the lower courts in the exercise of their broad equity jurisdiction have sensed a new public policy which is more tolerant with industrial corporations on account of size and demand as justification for their dissolution something more reprehensible than mere magnitude or the charge that they control the markets at home and abroad.

It will be interesting, students of economics think, to watch the outcome of the present litigation to discover whether the Supreme Court shares the view of the lower Federal courts that acts must be proved as a basis of dissolution.

Lacks Previous Prestige.

The Government goes into the cases not with the prestige it had in the suits brought to dissolve the Standard Oil and the American Tobacco companies. There it had the support of favorable decrees in the courts below. In the Steel case, which comes on appeal from the Federal court of New Jersey, the Government lost its suit, while in the Harvester case it fell far short of a complete victory in that a decree was given by a divided court, two Judges joining in a decree and one—Judge Sanford—giving a strong dissenting opinion. The majority opinion was by Judge Hook.

The brief filed by the Government today in the Steel case makes a sharp attack on the Federal Court of New Jersey on account of a line of reasoning by which that court reached a conclusion that it would not dissolve the Steel Trust.

"We venture the assertion," says the Attorney General's brief, "that nowhere in the history of English or American law until the decision of the circuit judges in this case, could there have been found an instance of judicial sanction for a combination corresponding to this description."

The decision to which Attorney General Gregory directs attention is that set out by Judges Buffington and McPherson in their opinion in the court below in which they say the record justifies the charge that the combinations were "huge" and the manner of their formation "wild"; that in the acquisition of the properties and their combination "less regard" was had for "their importance as integral parts of an integrated whole than to the advantages expected from the elimination of the competition," admission that stock watering had been proved, and the admission by the court below that the combination was formed for the object of "monopolizing and unduly restraining trade" and to "secure great profits."

Intent Conceded by Court.

Complaint is made in the Government brief that while the intention is conceded by the court, the results were not what the promoters intended; that absolute monopoly did not result and the combination while admitted to be great was not shown to be great enough "alone to fix and maintain prices."

On this point the Attorney-General says:

Stated more concretely, the view of these two judges appears to be that the assailed combinations, although "resulting in the immediate increase of prices, in some cases double and in others treble what they were before, yielding large dividends upon greatly inflated capital" and although still in existence, should not now be held unlawful because they have not the power unaided to maintain the increased prices—a conclusion based principally upon the fact that the combinations did not rely solely upon their own power to maintain the higher prices but combined with their competitors to that end, itself a criminal act.

Thus they say referring to the corporation: "Its lack of power to dominate the industry alone is established by the methods it was forced to institute and pursue with respect to the important matter of the fixation of prices. * * * Instead of relying upon its own power to fix and maintain prices, the corporation at its very beginning sought and obtained the assistance of others."

To which we answer first, on the law, that in order to establish the illegality of a combination of competitors it is not necessary to show that it has the power alone to fix and maintain prices at will, in other words, that it has an absolute monopoly (United States vs. E. C. Knight Company, 156 U. S. 1); and second, on the facts, that neither the circumstances that the corporation combined with competitors to maintain the higher prices established by the combinations whose stock is acquired, nor that in ten years its proportion of the whole trade has suffered a decline relatively speaking, justifies the inference that the corporation could not have maintained the higher prices by the exertion of its own power alone.

Why It Was Held a Good Trust.

Referring to some of the reasoning employed by the court below in dismissing the Government's petition for dissolution, the Attorney-General says:

Another ground of defence is that the formation of the combinations was necessary in order (1) to attain efficiency and (2) to promote foreign trade. This is but another way of saying that good intentions can save the combinations from illegality.

Where, as here, the necessary effect of the combination is duly to restrict competitive conditions the purpose or intention of the parties is immaterial. Combinations producing the effect are prohibited by the act of Congress, and on the most elementary principles a transaction which the law prohibits is not made lawful by an innocent motive or purpose.

The Government argues to-day that "the intent to violate implied from the doing what the law prohibits renders immaterial every other intent, purpose or motive. Therefore were the good effects claimed in this case conceded it would make no difference." On this point, which is also argued at length in the International Harvester case brief, the Attorney-General invokes the opinion of the Supreme Court in the sanitary (bathtub) trust case, and quotes Justice McKenna, who gave the opinion in that case, as follows:

"The law is its own measure of right and wrong, of what it permits or forbids, and the judgment of the courts cannot be set up against it in a supposed accommodation of its policy with the good intention of parties, and it may be of some good results."

Justice McKenna used this language in meeting the contention advanced by the bathtub combination that its real object was to improve the ware and thus benefit the public.

Would Rest With Each Judge.

Further, the Government brief contends that "any other construction of the law would require courts to decide not only whether a given combination prevents the existence of effective competition or constitutes a virtual monopoly but whether in their opinion monopoly would not be on the whole a better policy than competition—that is, compel them to act frankly on legislative grounds. This would leave no standard of interpretation whatever but the 'variant economic views of individual Judges,' and before a Judge not personally in sympathy with the law all combinations would escape."

Again, the Attorney-General asks:

"Could it be plausibly contended with respect to every business that more credit and larger capital would be desirable? These are the benefits claimed by every promoter on behalf of every combination. The same argument was made to Congress and rejected."

Replying to the contentions of the defendants in both the Harvester and the Steel cases that the combination was necessary to promote foreign trade, the Attorney-General insists that "following the formation of the combination the exports of the constituent companies declined and were subsequently expanded by selling large tonnages in foreign markets at prices far below those charged in this country."

Finally the crux of the Government's contention comes in the closing part of the brief in which the Attorney-General meets the contention that the Steel and Harvester combinations "have not increased prices or limited production, or degraded the quality of the product, or decreased wages, or decreased the price of raw materials, or oppressed competition," and are therefore "good trusts."

"This theory loses sight entirely of the broader policy of the act," says the brief, "which was not to wait until the evils enumerated are already upon us and then attempts to restrain them, but to prevent their occurrence by striking at their underlying cause—undue concentration of commercial power through the process of combination. Just as many other statutes, for example the commodity clause, do not stop with merely attempting to hold in check the evils at which they are aimed but strike directly at the underlying causes."

What Sherman Intended.

After an exhaustive review of authorities and of declarations made by Senator Sherman at the time of its passage, the brief in the Harvester case continues:

It is apparent that the objections to substituting a despotic organization of industry for the competitive system were quite as much social and political as economic; and therefore it would not have satisfied Congress to be told, as we are told in this case, that the power which they feared was thus far being exercised benevolently, that prices had not yet been increased nor wages lowered, nor the quality of products degraded, nor competitors oppressed. In their minds the mere existence of such powerful combinations was an evil—a continuing danger—from which in the long run, if not immediately, would come disaster.

For, as in the organization of Government, benevolence can never justify absolutism, neither can it do so in the organization of industry. The fundamental contention of the defendants (that the anti-trust law prohibits only combinations injurious to the public by raising prices, limiting production, deteriorating quality, decreasing wages or oppressing competitors) loses sight entirely of the broader purpose and basis of the act.

Must Include All.

Unless the underlying purposes of the act are to be wholly thwarted its prohibitions must be construed to include every combination in whatever form it interferes or threatens to interfere with the normal and effective operation of the law of competition in any branch of trade either because the combination is so comprehensive that such is its necessary effect or because the character of the means employed or other circumstances justify the inference that such an interference is intended and therefore dangerously probable.

The company's plea that three formidable competitors with a combined capital of $91,000,000 were engaged in the same business and afforded brisk competition, and testimony relating to the contention, are reviewed in detail. The competition thus afforded, the brief states, is "negligible."

SCENTS DIVORCE COLLUSION.

Cohalan Suspicious When Broker Offers Big Alimony.

Following testimony in the suit for divorce brought by Florence P. Cartier against Louis P. Cartier, a curb broker, Supreme Court Justice Cohalan said yesterday that "there was a distinct suggestion of collusion" in the case. The Justice appeared to be impressed by the fact that Cartier had voluntarily offered to sign an agreement to pay his wife $1,000 monthly as alimony.

Cartier's attorney represented that the broker agreed to this rather than reveal to rivals the details of his highly successful stock operations, a procedure which seemed likely when his wife applied for a court order to make him testify as to his financial resources to fix alimony.

The Justice reserved decision.

CALVARY BAPTISTS' DISPUTE REOPENED

Corporate Body of Church May Defend the Rev. Dr. Kemp To-morrow Night.

PROTEST TRUSTEES' ACT

Discontinuance of Quartet and Weekly Calendar Called Subterfuge.

The old fire of dissension which has been smoldering within the Calvary Baptist Church for some months past has every prospect of breaking out into a violent blaze to-morrow night when a meeting of the corporate body of the church will be held.

Ostensibly the meeting was called to protest against the action of the board of trustees in ordering the discontinuing of the church quartet and the weekly printed calendar, but several members of the congregation hinted yesterday that the true object was to repudiate in open session "an artful attempt to embarrass the Rev. Dr. Joseph W. Kemp."

The immediate trouble is attributed to two resolutions passed by the board of trustees and announced in the church calendar or bulletin of February 4. These resolutions had to do with the quartet and calendar and the cause of the discontinuing of both was given out as due to the condition of the church's finances.

Insurgents See Subterfuge.

This reason, however, is said by certain of the insurgent members to have been simply a subterfuge, and as a result of their dissatisfaction they petitioned the pastor to call a meeting of the corporate body for to-morrow night. The announcement for this special open session was first read from the pulpit last Sunday and to-day the second announcement will be made.

Officials of the church are maintaining silence and decline to discuss a number of anonymous pamphlets and circulars which have been issued and which give the affair a mysterious phase. Since Dr. Kemp's acceptance of the pulpit in October, 1915, there has been more or less dissatisfaction and discontent. Certain members held resentment against the pastor from the start, because he was not an American minister, but had been called from Edinburgh, Scotland. Then into his hands had fallen an old entanglement and by his refusal to take definite steps in relation to a church employee matters were further complicated. Last March he handed in his resignation, but later, at the request of the congregation, he withdrew it and consented to continue as pastor.

Fights Against "Paper Church."

A month later Dr. Kemp threw a bomb into a meeting of members of the congregation by announcing that he had stricken from the membership roll 1,331 names out of a total of some 2,300.

"I will not be the pastor of a paper church," he declared at that time, and explained that he had taken this action because those dropped were not sufficiently active in church affairs.

Early in January of this year the church was stirred by the distribution of an anonymous circular bitterly attacking the board of trustees. The present circular, just distributed, bears unmistakable marks of having been penned by the same hand, and is no less severe in its criticism of the church officials.

Bearing at least a timely connection with the anonymous plea, there has been sent out a typed "Dear Friend" letter, presumably to members of the congregation, duly signed with a typewriter and bearing the names of Joseph M. Lesser, J. Griffin Daughtry, S. Raymond Estey and John Baptist Marshall.

Letter Favors Dr. Kemp.

This letter reads in part:

"On that date, to wit, February 19, there is to be a corporate meeting of the Calvary Baptist Church at which matters of supreme importance to the welfare of the church and the successful continuation of the present ministry of the Rev. Joseph W. Kemp, our pastor, will come up for determination.

"This is an occasion that calls for your personal attendance. Nobody else can act for you, and it is necessary that you be present to vote to support the good work which Dr. Kemp is doing."

The Baptist Church is made up of two bodies—the spiritual and the corporate body. The corporate body consists of all members of the congregation whether they are members of the church or not, and it is to them that the Board of Trustees is directly responsible.

One purpose of the session to-morrow night is to determine the exact powers of the trustees and to decide the church legality of their recent action in discontinuing the church quartet and calendar without consulting the pastor or the corporate body.

"FULL CREW" LAW CONDEMNED.

Jersey Board Says It Fails as Safety Measure in 22 States.

The laws requiring "full crews" on railroad trains have proved failures as safety measures in twenty-two States, according to a report which has been made public by the Bureau of Research of the New Jersey State Chamber of Commerce at Newark.

The report declares that 97.6 per cent of the railroad casualties in States where such laws are in force are due to such causes as could not be prevented by the full crew laws, and that inasmuch as they are intended chiefly as safety measures they should be repealed.

AIM TO END FREIGHT TIEUP WITHIN WEEK

All Railroads Rushing Long Trains of Empty Cars to Western Points.

PRODUCE RUNNING LOW

Hundred Ships Helping to Relieve Strain by Loading at Eastern Ports.

Railroads of the country applied themselves yesterday to the work of readjusting traffic conditions so the West, the South, the Northwest and the Southwest may get the 110,000 cars required to ship the mountains of freight that have been piling up since the railroad embargoes against Eastbound shipments. Over every line long trains of empties left the yards. Most of these could have been filled with commodities manufactured for the West or with raw materials, but because of the general congestion the roads forewent this profitable trade.

Clearance over everything but passenger trains was given to these long strings of empty cars. Not until they return with their domestic freight will there be any relief for the scarcity of coal and foodstuffs that is felt throughout the whole East. Their return will ease the pressure, will aid in the standardization of values that have been upset by the unequal distribution of goods and will empty the warehouses of the West.

100 Ships Loading.

With these trainloads of cars working to take off the strain from within, a hundred bottoms along the Eastern seaboard are loading from cars that have been in local yards for weeks. Thousands of tons will be shipped from Atlantic ports before the end of this week and thus new trains of empties will be sent to the West. The end of the congestion problem now seems fairly in sight.

With the change in seasons approaching railroad men feel that all the causes for car congestion are in process of elimination. They look to a restoration of normal conditions before March 1.

Dealers in flour, grain, wheat, oats and other produce in New York city, Brooklyn, Jersey City and Newark, with hundreds of thousands of tons of their commodities on the rails and sheaves of orders on their files, are down to the bottoms of their bins. Their plight might be compared to that of the man with a bag of gold on a desert island. Unless the relief promised to them in the "gentlemen's agreement" of the thirty railroad managers who met in Washington on Tuesday is made good within the next week New York and environs will feel the pinch of produce poverty.

Some of the most prominent men in the Produce Exchange say they have not received carloads of stuffs loaded last October and consigned to New York. This delay, which results of course from the tieup on sidings in Chicago, Buffalo, Pittsburg and other main freight terminals, is attributable to the preference that has been accorded by the railroads to export goods, the produce men charge.

Not Competitive

They pointed out that this export trade is competitive; that all the roads of the country have sought the rich profits to be made from it. It has been awarded on a basis of quick delivery. Therefore, say the produce men, the roads gave this class of freight the right of way.

Domestic trade, save in a few places, is not competitive. By routes and in many cases by agreement certain roads have the sole right to tap stated supply points and to make deliveries in towns and cities that are not reached by other roads. This, according to THE SUN'S informants, explains why the domestic traffic was put at a disadvantage.

THE SUN on Thursday printed a statement from W. W. Atterbury, head of the American Railway Association and vice-president of the Pennsylvania Railroad, to the effect that the car shortage would be lightened to a great extent if consignees would unload their carloads when received. This caused deep resentment in the Produce Exchange.

All who were questioned insisted they unloaded their cars as fast as they were received in local yards. Their need is such, they said, that they could not afford to leave the stuff idle in the cars. Several of them paid extra for men to unload their freight on Lincoln's Birthday. All of them guaranteed to empty cars within forty-eight hours after arrival here.

Produce Values Increase

Because of the scarcity here produce has taken on greater value per carload with every mile nearer New York. Upon the consumer the burden, as usual, has fallen with the greatest force. Since the start of the embargo extra premiums have been imposed on all shipments. Whereas only a few days ago in certain products this premium was 7 cents a bushel, yesterday it had advanced to 11 cents. In some instances the premium has been advanced 100 per cent. This will have to be borne by the buyers.

Nor has the way of the exporter been any too easy. There are in nearby yards many thousand cars that were destined for shipment a month ago. These were delivered in New York marked for cargo on specific vessels. Frequently the Allies have commandeered these stated vessels for other purposes. As an example, a number of bottoms that were to carry grain and flour abroad were turned over to munition suppliers. This has compelled the men in the export trade to wait for another boat with demurrage charges creeping up all the time.

From all THE SUN could learn there will be the liveliest cooperation on the part of shippers and consignees with the agreement made by the railroads. They will strive with all the energy in their power to keep the freight cars in constant movement.

ALL BORDER GUARD IS ODERED HOME

Movement of 53,000 State Militia, a Two Weeks Task, to Begin Tuesday.

WASHINGTON, Feb. 17.—Coincident with the reopening of the American Embassy in Mexico the big army of National Guardsmen that was concentrated on the border will be in process of dissolution. Orders were issued by the War Department to-day directing Major-Gen. Funston to begin the immediate demobilization of all the guard units remaining in border camps. Movement north will begin February 20 and it is expected that the last troop train will be on its way north by March 7.

Gen. Funston still will have on the border nearly 50,000 troops, all of the regular army, disposed along the line from Brownsville to Yuma, Ariz., including all the troops who were in Mexico under Gen. Pershing.

Secretary Baker emphasized that the withdrawal of the State militia is in no way connected with the crisis with Germany, but carries out a policy determined on long ago by the Administration. The order was issued after Gen. Funston had reported that with the new disposition of regulars he felt that he had enough men to meet any border exigencies that might arise. The number of guardsmen remaining to be demobilized under to-day's order is about 53,000.

Administration officials place entire confidence in Gen. Funston's opinion that the force of regulars will be sufficient. They are understood to have been convinced by the reports of special observers for the State Department and the army that while it may be possible for Villa and Zapata followers to commit minor depredations in the sparsely settled region west of El Paso there is little possibility of a recurrence of raids in the lower Rio Grande country.

It also is desired that the Carranza Government be embarrassed as little as possible in its efforts to control Mexico and the maintenance of a large army at the border has been a constant cause of complaint from Mexicans. The reduction is expected by officials here to have a beneficial effect on relations between the two countries, especially just now when diplomatic intercourse is being resumed.

Ambassador Fletcher is expected to call at the Mexican Foreign Office Monday to present his credentials. A memorandum on the killing of the three Americans south of Hachita, N. M., is being prepared here and will be forwarded to him early next week with instructions that he make representations to the de facto Government.

Among troops involved in the withdrawal order are the Twelfth and Sixty-ninth Infantry, the First Cavalry, the Third Field Artillery and Field Hospital No. 4, all from New York; Battery C from New Jersey and Batteries E and F from Connecticut.

Fined $30,000 for Mail Frauds.

AUBURN, N. Y., Feb. 17.—Wylie B. Jones and Herbert E. Woodward, both of Binghamton, who were found guilty in United States court for fraudulent use of the mails in selling sargol, an alleged "flesh producer," were sentenced by Judge George W. Ray to-day to pay fines aggregating $30,000. In view of the fact that Judge Ray did not impose jail sentences the defendants announced that they would waive all appeals and paid their fines promptly. Jones paid $20,000 and Woodward paid $10,000 and both were discharged.

MOVIES EMPTYING INSANE HOSPITALS

Also Dealing John Barleycorn Death Blow, Vitagraph Manager Testifies.

STILL INDUSTRY STARVES

Only 13,000,000 of Country's 100,000,000 Population Are Daily Patrons.

Keeping farmers' wives out of insane hospitals is only a part of the social service and moral uplift provided by the movies, according to Walter W. Irwin, general manager of the Vitagraph Company, who was there with the alibi when the Wheeler committee at the Murray Hill Hotel yesterday asked him why the motion picture industry should not stand a State tax.

"The motion picture industry is the greatest of social mediums," he modestly admitted, "It is now keeping out of the insane asylums people such as farmers' wives whom monotony formerly drove to those institutions." Now they crank up the jitney and drive to the nearest village movie show is the implication.

The movies are stealing the patronage of the place on the corner with sawdust on the floor. The people are turning from alchoholic to visual stimuli, and are ruining their eyes instead of their stomachs. Strong men are turning from strong drink to the vicarious adventures on the screen for their excitement these days, or such is the logical inference from the testimony of the witness.

"Saloon's Greatest Enemy."

"Any Police Commissioner," Mr. Irwin told the committee, "will acknowledge that the industry is the greatest enemy of the saloons."

"I warn you, gentlemen," he said in a voice that trembled with suppressed emotion, "that any tax placed upon the industry will fall ultimately on the people and may serve to place this cheap timable boon beyond the reach of the common people. The influence of moving pictures is more wonderful than sermons and editorials."

Mr. Irwin expressed the orthodox motion picture views on censorship.

"Do you know of any industry," asked Chairman Wheeler, "in which there are so many $50,000 salaries being paid?"

"Perhaps not," Mr. Irwin said, "but you do not know of any business in which there exists the necessity for such continual steaming up."

Mr. Irwin estimates that only about 13,000,000 in the United States and Canada see the movies in the course of twenty-four hours. It is because of this deplorable lack of interest in the films, no doubt, that the industry will not be able to stand up under additional taxation.

Another Faces Punishment.

M. D. Kopple, attorney for J. T. Morrison, who in previous hearings proved to be a combative witness, was equally refractory yesterday and declined to give the committee the information it sought and was dismissed from the stand for alleged discourtesy to the committee and threatened with punishment. He had been asked to justify the claims made in order to market the shares of the American Standard Motion Picture Machine Company when he had acknowledged that the circulars had passed through his hands as the lawyer for the firm. The committee went into executive session to determine on the punishment that should be meted out to the lawyer.

Chairman Wheeler said yesterday that the inquiry has established the fact that the small exhibitor who caters to the poorer classes of movie fans is load prepared to stand an additional tax in the form of a State levy and the committee will so recommend in its report.

Nautical School Alumni Dine.

Rear Admiral Nathaniel R. Usher, commandant of the New York Navy Yard, was the principal speaker last night at the thirteenth annual banquet of the Alumni Association of the New York Nautical School in the Majestic Hotel. Other speakers were Commodore J. W. Miller, chairman of the board of governors of the school; Joseph Mayer, president of the Maritime Exchange; Montague Lesser, general counsel for the Marine Society, and Capt. E. S. McMurray.